



**TRANSMITTAL LETTER**

*DIAC*  
*TW*

In re Application of:  
**Daniel SPITZER et al.**

**Serial No: 10/023,188**

**Filing Date: December 18, 2001**

**Title: METHOD FOR SELECTING A  
FORMULATION FOR ONE OR MORE  
LAYERS OF A MULTI-LAYER COATING**

: **Docket No: ACO 2843 US**  
:  
: **Examiner: Jennifer MICHENER**  
:  
: **Group Art Unit: 1762**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 2233-1450

Sir:

- ☒ Transmitted herewith is a responsive document(s) for this application.
1. **TRANSMITTAL LETTER IN DUPLICATE;**
  2. **REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d);**
  3. **COPY OF AUTO-REPLY FACSIMILE TRANSMISSION;**
  4. **COPY OF RESPONSE TO RESTRICTION REQUIREMENT**
  5. **COPY OF NOTICE OF ALLOWABILITY;**
  6. **CERTIFICATE OF MAILING**

☒ Request for Reconsideration – (\$200.00)

The total fee believed due is **\$200.00**. Please charge this amount and any other fees which may be due (including filing fees under 37 CFR 1.16 and processing fees under 37 CFR 1.17) to Deposit Account No. 01-1350. If an extension of time is required but has not been requested above, Applicant hereby petitions for an extension of time sufficient for the attached document(s) to be timely. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

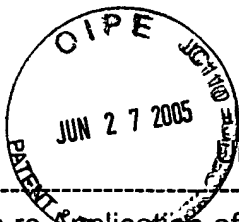
*Michelle J. Burke*  
Michelle J. Burke  
Attorney for Applicant(s)  
Reg. No. 37,791

Akzo Nobel Inc.  
Intellectual Property Department  
7 Livingstone Avenue  
Dobbs Ferry, NY 10522-3408  
Tel No.: (914) 674-5459

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as First-Class Mail in an envelope addressed to: Assistant Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on:  
June 23, 2005

*Diane L. Moxley*  
Diane L. Moxley



UNITED STATES PATENT AND TRADEMARK OFFICE

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Daniel SPITZER et al.

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P.O. Box 1450  
Alexandria, VA 22313-1450

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT**  
**INDICATED ON PATENT ISSUED UNDER 37 C.F.R. §1.705(d)**

This request for reconsideration of the patent term adjustment for the term indicated on United States Patent No. 6,905,727 and is being filed with 2 months of the date the patent issued on June 14, 2005.

Following is a Basis(es) of the correct Patent Term Adjustment, under §1.702 for the Adjustment-Part B (37 C.F.R. § 1.705(b)(2) and (ii)).

Applicant filed the drawings in the instant application on January 14, 2004 by way of facsimile. The USPTO Pair System indicates that the drawings were filed on October 14, 2004. As a result, Applicant was charged an additional 120 days delay. This is incorrect as can be seen from the copy of Auto-Reply Transmission and copies of the Response to the Restriction Requirement. Further proof can be seen from the enclosed copy of Notice of Allowability which indicates that the drawings were submitted on 14 January 2004 and were accepted by the Examiner.

06/30/2005 MBERHE1 00000039 011350 10023188

01 FC:1455 200.00 DA

**CERTIFICATE OF MAILING**

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June 23, 2005

Date

  
Diane L. Moxley

Applicant respectfully request that the 120 days be added to the patent term which therefore would adjust the term to 313 days instead of 193 days.

The above-identified patent (37 C.F.R. §1.705(b)(2)(iii) is not subject to a terminal disclaimer nor were the circumstances during the prosecution of this application constitute a failure to engage in reasonable efforts to conclude processing or examination of this application as set forth in § 1.704.

Authorization for payment of the fee is attached herewith.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michelle J. Burke". The signature is fluid and cursive, with the first name "Michelle" and last name "Burke" being clearly legible.

Michelle J. Burke  
Attorney for Applicant(s)  
Reg. No. 37,791

Akzo Nobel Inc.  
Intellectual Property Department  
7 Livingstone Avenue  
Dobbs Ferry, NY 10522-3408  
Tel No.: (914) 674-5459



# Auto-Reply Facsimile Transmission

TO:

Fax Sender at 914 693 4236

Fax Information

Date Received:

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9 (including cover page)

**ADVISORY:** This is an automatically generated return receipt confirmation of the facsimile transmission received by the Office. Please check to make sure that the number of pages listed as received in Total Pages above matches what was intended to be sent. Applicants are advised to retain this receipt in the unlikely event that proof of this facsimile transmission is necessary. Applicants are also advised to use the certificate of facsimile transmission procedures set forth in 37 CFR 1.8(a) and (b), 37 CFR 1.6(f). Trademark Applicants, also see the Trademark Manual of Examining Procedure (TMEP) section 306 et seq.

Received  
Cover  
Page

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AKZO PATENT

Fax: 914-693-4236

Jan 14 2004 16:00 P.01

## TRANSMITTAL LETTER

In re Application of:  
Daniel SPITZER et al.

Docket No: ACO 2843 US

Serial No: 10/023,188

Examiner: Jennifer MICHENER

Filing Date: December 18, 2001

Group Art Unit: 1762

Title: METHOD FOR SELECTING A  
FORMULATION FOR ONE OR MORE LAYERS  
OF A MULTI-LAYER COATING

**CERTIFICATE OF FACSIMILE TRANSMISSION**  
It is hereby verified that the attached Response to  
Office Action (if attached) is being transmitted  
from 002-0810 to the Assistant Commissioner for  
Patents

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

on January 14, 2004  
*Christina Cangelosi*  
Christina Cangelosi

Sir:

Transmitted herewith find the document(s) related to this application.  
**TRANSMITTAL LETTER IN DUPLICATE; RESPONSE/RESTRICTION TO OFFICE  
ACTION; (1) DRAWING; AND CERTIFICATE OF FACSIMILE**

☒ Applicant hereby petitions for an extension of time under 37 CFR 1.136 of:

☐ One Month (\$110.00)

☒ Two Months (\$420.00)

☐ Three Months (\$960.00)

☐ Four Months (\$1480.00)

The total fee believed due is \$ 420.00. Please charge this amount and any other fees  
which may be due (including filing fees under 37 CFR 1.10 and processing fees under 37  
CFR 1.17) to Deposit Account No. 01-1950. If an extension of time is required but has not  
been requested above, Applicant hereby petitions for an extension of time sufficient for the  
attached document(s) to be timely. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

*Joan M. McGillicuddy*  
Joan M. McGillicuddy  
Attorney for Applicant(s)  
Reg. No. 35,608

Akzo Nobel Inc.  
Intellectual Property Dept.  
7 Livingstone Avenue  
Dobbs Ferry, NY 10522-3408  
Tel No.: (914) 674-5463

**TRANSMITTAL LETTER**

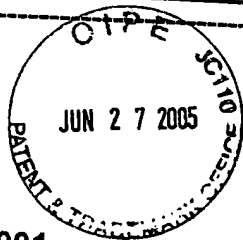
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Docket No: ACO 2843 US

Examiner: Jennifer MICHENER

Group Art Unit: 1762

**CERTIFICATE OF FACSIMILE TRANSMISSION**

It is hereby certified that the attached: Response to  
Office Action; (9 sheets) is being faxed to  
703-872-9310 to the Assistant Commissioner for  
Patents

on January 14, 2004

*Christina Cangelosi*  
Christina Cangelosi

*OMA*

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Jan 14 2004 16:00

Fax/Phone Number	Mode	Start	Time	Page	Result	Note
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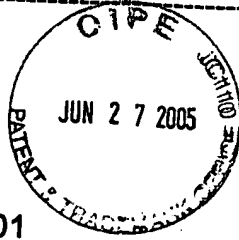
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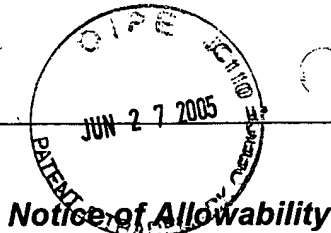
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Attorney for Applicant(s)  
Reg. No. 35,608

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Intellectual Property Dept.  
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Dobbs Ferry, NY 10522-3408  
Tel No.: (914) 674-5463



Application No.

10/023,188

Examiner

Jennifer K. Michener

Applicant(s)

SPITZER ET AL.

Art Unit

1762

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amdt of 1/14/2004.
2. ☒ The allowed claim(s) is/are 1-7.
3. ☒ The drawings filed on 14 January 2004 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All   b) ☐ Some\*   c) ☐ None   of the:
    1. ☒ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)           |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                   |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance  |
|   | 9. <input type="checkbox"/> Other _____   |



### EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Joan McGillycuddy on 5/12/2004.

The application has been amended as follows:

In the specification:

On page 3, line 13, the word ~~-AUTOMATCHIC-~~ replaces the word "Automatchic".

On page 3, line 14, the word ~~-MACBETH COLOUR-EYE-~~ replaces the word "MacBeth Colour-Eye".

On page 3, line 15, the word ~~-BYK-GARDNER-~~ replaces the word "BYK-Gardner".

On page 2, line 15, the word ~~-X-RITE-~~ replaces the word "X-Rite".

In the claims:

Art Unit: 1762

Claim 1. <sup>Currently</sup>  
(Amended) A method for selecting coating formulations for a multi-layer coating for repair purposes, the multi-layer coating comprising a primer applied on a substrate, at least one base or top coat and, optionally, a clear coat, the method comprising the following steps:

providing one or more databases of colorimetric data relating to a set of formulations and/or relating to constituents for a primer and base or top coat layers;

entering the colorimetric data of an object to be repaired into a computer having access to said database;

determining the formulation of the primer and of the other layers of the multi-layer coating with the aid of the database, in such a way that the resulting colour of the total multi-layer coating to be applied matches the colour of the object to be repaired using the lowest amount of coating material by allowing the color of the lower layers to be visible and have an effect on the resulting colour.

2. The following is an examiner's statement of reasons for allowance: the prior art of record fails to teach a combination of primer and upper layers which, together, form a desired repair paint color with the color of the lower layers, such as the primer, being visible as part of the final color seen. The method of the instant invention allows a lesser amount of total coating to achieve a desired result. The closest prior art of record, Rodrigues, teaches selecting a primer with a reflectance that matches that of a topcoat, said topcoat formulation having *already been selected* for a given operation.

Art Unit: 1762

The secondary reference matches only a topcoat to existing paint. As outlined by Applicant, the references fail to teach, in combination, the selection of layer colors in a combination such that all layers have an impact on the final color when viewed together using the colorimetric database matching approach of Applicant.

3. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer K. Michener whose telephone number is (571) 272-1424. The examiner can normally be reached on Monday through Thursday and alternate Fridays.
5. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive P. Beck can be reached on 571-272-1415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.
6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

Art Unit: 1762

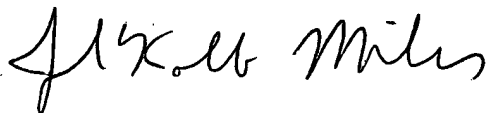
published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).



Jennifer Kolb Michener  
Patent Examiner  
Technology Center 1700  
May 14, 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:  
Daniel SPITZER et al.

Serial No: 10/023,188

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Patents

on January 14, 2004

*Christina Cangelosi*  
Christina Cangelosi

Response

In response to the Official Action mailed August 14, 2003 and in  
accordance with the provisions of 37 C.F.R § 1.111 and with AMENDMENTS IN A  
REVISED FORMAT NOW REQUIRED, signed January 31, 2003, Applicants  
provide the following amendments and remarks for entry in the above-identified  
case.:

**Drawing Page** is submitted separately herewith.

**Listing of Claims** begins on page 2 of this paper.

**Remarks/Arguments** begin on page 4 of this paper.

**Conclusion** begins on page 6 of this paper.

## **LISTING OF THE CLAIMS**

1. (Original) A method for selecting coating formulations for a multi-layer coating for repair purposes, the multi-layer coating comprising a primer applied on a substrate, at least one base or top coat and, optionally, a clear coat, the method comprising the following steps:
  - providing one or more databases of colorimetric data relating to a set of formulations and/or relating to constituents for a primer and base or top coat layers;
  - entering the colorimetric data of an object to be repaired into a computer having access to said database;
  - determining the formulation of the primer and of other layers of the multi-layer coating with the aid of the database, in such a way that the resulting colour of the multi-layer coating to be applied matches the colour of the object to be repaired using the lowest possible amount of coating material.
2. (Original) The method according to claim 1, wherein the formulation is determined by selecting from a given set of predetermined formulations.
3. (Original) The method according to claim 1, wherein the formulation is determined by calculating from a set of data of available constituents, e.g., K and S values.
4. (Original) The method according to claim 1, wherein a primer is selected or calculated which closely matches the colour of the object to be repaired.
5. (Original) The method according to claim 1, wherein the colorimetric data of the object to be repaired are measured from several, preferably three or more, angles and in that the database comprises data relating to the

colorimetric data of the composition to be selected or determined at these angles.

6. (Original) The method according to claim 1, wherein a primer formulation admixed with top or base coat toners is selected or calculated.
7. (Original) The method according to claim 1, wherein the colorimetric data in the database comprises  $L^*$ ,  $a^*$ ,  $b^*$  parameters according to the CIE Lab system.

## **RESPONSE/REMARKS**

Pursuant to the request in paragraph 3 of the Office Action, Applicants herewith submit the drawing page which was inadvertently not submitted with the original application. Applicants state for the record that no new matter is added by the submission of this drawing.

In response to paragraph 4 of the Office Action, Applicants have reviewed the Specification and will make the modifications to the Specification with regard to the trademarks listed, and submit substitute pages or a substitute specification, as necessary.

The Examiner has rejected the claims as allegedly obvious over WO 97/43052 ("Rodrigues") in light of US 6,539,325 ("Numata") which describes the use of a spectrophotometer and the use of measured colorimetric data for bank searching a suitable color formulation for a repair coating. Applicants respectfully traverse this rejection for the reasons set forth below.

As a first matter, the Examiner has made an erroneous assumption with regard to color matching. The Examiner erroneously assumes that choosing separate coatings layers which will match the vehicle is the same or would suggest the selection of a combination of primer **plus** topcoat which **jointly** matches the color of the original coating.

Rodrigues describes a system for selecting a suitable primer once the top coat has already been selected. It does not disclose or suggest selecting a combination of primer plus top coat which jointly matches the color of the original paint on the car to be repaired. More particularly, Rodrigues deals with a hiding problem but not with a matching problem.

One skilled in the art looking at Rodrigues in light of Numata, would not be motivated to obtain a color match utilizing the primer + top coat combination as a whole, rather than relying on matching the individual components. In other words to use the **color effect** of the selected colored primer to come to a match.

On the contrary, combining the teachings of Rodrigues and Numata would actually teach away from the present invention. Such a combination would result



in a method of **first** determining a completely matching top coat formulation according to the Numata teachings and, in a **second** step, determining a suitable grey primer as taught in Rodrigues. Such a method is substantially different from the present invention.

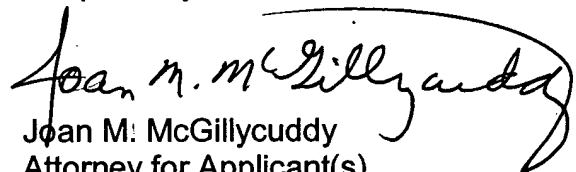
## **CONCLUSION**

As set forth above, neither Rodrigues nor Numata alone or in combination discloses nor suggests the present invention, nor is there a motivation to combine these references with respect to the present invention.

Based on at least the application, and the remarks herein, Applicants maintain it is not **obvious in view of the cited prior art documents, either alone or in combination, to come up with the coating composition according to the present invention.**

Applicants request withdrawal of the objections and believe the present application to be in condition for allowance, which action is respectfully requested.

Respectfully submitted,



Joan M. McGillicuddy  
Attorney for Applicant(s)  
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